

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
J Starr LLC dba J Starr Oil
W & M Enforcement**

Case No. WM-23-63

ORDER ON CONSENT AGREEMENT

March 8, 2023

Preliminary Statement

On March 15, 2022, a Commission Weights and Measures Inspector (Inspector) inspected retail motor fuel devices at J Starr LLC dba J Starr Oil's (J Starr) principal place of business located at 17050 Highway 11, Hankinson, North Dakota 58041.

During the inspection, the Inspector observed a hose elbow on pump 7 actively leaking diesel fuel and observed the outer protective rubber cover of the hose on pump 11 was worn through exposing the inner metal reinforcement layer. The Inspector determined both situations were hazardous to any individual using the devices and subsequently removed the devices from service by affixing "Rejected for Repair" tags to each device which stated the device is illegal to use in commerce until repaired and recertified. The Inspector then installed lead wire seals on each device to prevent the handle from being removed from the pump.

After finalizing the inspection, the Inspector reviewed the invoice and issues identified during the inspection with J Starr Manager Heather Steenbock. Ms. Steenbock was not available when the Inspector was ready to leave the premises, so the Inspector left a copy of the invoice and test report, which details the results of the inspection, with J Starr employee Rex Roeder. Mr. Roeder signed a copy of the invoice for the Inspector's records.

On May 10, 2022, the Inspector returned to J Starr and noted the safety issues with both pumps 7 and 11 were still present, the "Rejected for Repair" tags were still affixed, but the lead wire seals installed on each pump handle were removed.

On February 21, 2023, a Consent Agreement between Public Service Commission Advocacy Staff (Staff) and J Starr was filed for the resolution of the violation.

Discussion

J Starr Oil is a trade name owned by J Starr LLC, a domestic limited liability company with a principal address of 10908 38th Street South, Horace, North Dakota 58047-9771.

In accordance with paragraph G-UR.4.1. of the National Institute of Standards and Technology, Handbook 44 (2020 edition), adopted by reference, "All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall be continuously maintained in proper operating condition throughout the period of such service."

Pursuant to N.D.C.C. § 64-02-14, "[a] weighing or measuring device that does not meet applicable design or tolerance requirements must be marked in the manner set by the commission and may not be used in commerce without the consent of the commission." Additionally, N.D.C.C. § 64-03-01 states in part "[i]t is unlawful for any person to. . .remove any tag placed thereon by the commission."

Furthermore, N.D. Admin. Code § 69-10-01-03(5) provides that it is unlawful to allow an official tag or seal to be removed without commission approval. N.D. Admin. Code § 69-10-01-05 states that "[o]nce a weighing or measuring device has been rejected, the device may not be used in commerce."

By failing to maintain the lead wire seals and prevent the use of pumps 7 and 11, Staff asserts that J Starr violated N.D.C.C. §§ 64-02-14 and 64-03-01 in addition to N.D. Admin. Code §§ 69-10-01-03(5) and 69-10-01-05.

J Starr and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, J Starr agrees to be assessed a civil penalty of \$400 made payable to the North Dakota Public Service Commission within ten (10) business days of service of the Order accepting or approving the Consent Agreement (Order).

Having considered this matter, the Commission finds the February 21, 2023, Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement, filed with the Commission on February 21, 2023, between J Starr LLC dba J Starr Oil and Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement.
2. J Starr is assessed a civil penalty of \$400, payable to the North Dakota Public Service Commission within ten (10) business days of service of this Order.
3. For identification of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. J Starr shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten (10) days of the issuance of the Order.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

**Public Service Commission
J Starr LLC dba J Starr Oil
W & M Enforcement**

Case No. WM-23-63

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
)	
J Starr LLC dba J Starr Oil)	
)	
Respondent.)	

Preliminary Statement

This Consent Agreement is entered into by and between J Starr LLC dba J Starr Oil (J Starr) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. WM-23-63.

On March 15, 2022, a Commission Weights and Measures Inspector (Inspector) inspected retail motor fuel devices at J Starr's principal place of business which is located at 17050 Highway 11, Hankinson, North Dakota 58041.

During the inspection, the Inspector observed a hose elbow on pump 7 actively leaking diesel fuel and observed the outer protective rubber cover of the hose on pump 11 was worn through exposing the inner metal reinforcement layer. The Inspector determined both situations were hazardous to any individual using the devices and subsequently removed the devices from service by affixing "Rejected for Repair" tags to

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Discussion

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Pursuant to N.D.C.C. § 64-02-14, "[a] weighing or measuring device that does not meet applicable design or tolerance requirements must be marked in the manner set by the commission and may not be used in commerce without the consent of the commission." Additionally, N.D.C.C. § 64-03-01 states in part "[i]t is unlawful for any person to. . .remove any tag placed thereon by the commission."

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By failing to maintain the lead wire seals and prevent the use of pumps 7 and 11, Staff asserts that J Starr violated N.D.C.C. §§ 64-02-14 and 64-03-01 in addition to N.D. Admin. Code §§ 69-10-01-03(5) and 69-10-01-05.

Agreement

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Staff's impression was that this was J Starr's first violation and since J Starr agreed to their culpability, the matter resulted in a reduced penalty amount. However, subsequent violations will likely result in an escalation of the penalty. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Parties agree to the following, subject to the approval and acceptance of the Commission:

1. J Starr violated N.D.C.C. §§ 64-02-14 and 64-03-01, N.D. Admin. Code §§ 69-10-01-03(5), and 69-10-01-05 by failing to maintain the lead wire seals and prevent the use of pumps 7 and 11.
2. J Starr agrees to be assessed a civil penalty of \$400, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.

3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
4. J Starr consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, J Starr understands and agrees to waive all rights to contest the violation, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.
5. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
6. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
7. The undersigned is authorized to act on behalf of J Starr and bind J Starr for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 21st day of February, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

John Schuh
Special Assistant Attorney General, Bar ID 08138
North Dakota Public Service Commission
600 E Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2421

Dated this 21st day of FEBRUARY, 2023

J Starr LLC dba J Starr Oil

By: 

Constantine Alexakos, Owner